

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #15	CCRB Case #: 201703122	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/22/2017 12:07 PM	Location of Incident: Near 181 Woodruff Avenue	Precinct: 70	18 Mo. SOL 10/22/2018	EO SOL 10/22/2018	
Date/Time CV Reported Sat, 04/22/2017 1:37 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 04/22/2017 1:46 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jerry Sukhnandan	2300	940778	070 PCT
2. POF Christina Farley	21816	959625	070 PCT
3. POM Johnny Marquez	13959	960876	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jerry Sukhnandan	Abuse: Sergeant Jerry Sukhnandan stopped § 87(2)(b)	
B.SGT Jerry Sukhnandan	Abuse: Sergeant Jerry Sukhnandan frisked § 87(2)(b)	
C.SGT Jerry Sukhnandan	Abuse: Sergeant Jerry Sukhnandan searched § 87(2)(b)	
D.SGT Jerry Sukhnandan	Abuse: Sergeant Jerry Sukhnandan questioned § 87(2)(b)	
E.POM Johnny Marquez	Abuse: Police Officer Johnny Marquez searched § 87(2)(b)	
F.POF Christina Farley	Abuse: Police Officer Christina Farley searched § 87(2)(b)	

Case Summary

On April 22, 2017, § 87(2)(b) filed this complaint on behalf of her 17-year-old brother § 87(2)(b) in person at the 70th Precinct stationhouse, which was reported to the CCRB by Sgt. Gary Traverson of the same command via the agency Call Processing System. On the same day, Sgt. Traverson also reported the complaint to IAB via telephone and fax generating IAB log #2017-14664. The IAB log was received by the CCRB on April 27, 2017, and a new case #201703269 was generated, which was later closed as duplicate.

On April 22, 2017, at 12:07 p.m., § 87(2)(b) was stopped by Sgt. Jerry Sukhnandan of the 70th Precinct in vicinity of 181 Woodruff Avenue in Brooklyn (**Allegation A**). Sgt. Sukhnandan was not headed to a specific assignment and was patrolling the area together with his partners PO Johnny Marquez and PO Christina Farley of the same command. § 87(2)(b) was frisked and allegedly searched by Sgt. Sukhnandan (**Allegations B and C**). Sgt. Sukhnandan allegedly asked § 87(2)(b) if he had any narcotics on him, and both PO Marquez and PO Farley allegedly searched him as well (**Allegations D, E and F**). Sgt. Sukhnandan allegedly offered a card with his information to § 87(2)(b) but he refused and left. Sometime later, Sgt. Sukhnandan and his partners were stopped by § 87(2)(b) to whom § 87(2)(b) related that he had just been stopped, while driving on Ocean Avenue between Parkside and Woodruff Avenue. § 87(2)(b) inquired why § 87(2)(b) had been stopped, and one of the officers allegedly responded because § 87(2)(b) looked suspicious. After that, the officers left since they were responding to another assignment. Later during the day, Sgt. Sukhnandan prepared a stop, question, and frisk report in regards to the incident.

There is no video recording of the incident.

Mediation, Civil and Criminal Histories

- On June 14, 2017, mediation was explained to and rejected by § 87(2)(b) and his mother § 87(2)(b) on his behalf without providing a reason.
- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of July 20, 2017 with regard to the incident [BR 13].
- As of July 19, 2017, New York State Office of Court Administration database records reveal no criminal convictions either for § 87(2)(b) or § 87(2)(b) [BR 10, 11].

Civilian and Officer CCRB Histories

- This is a first CCRB complaint filed by § 87(2)(b) and on behalf of § 87(2)(b) [BR 12].
- Sgt. Sukhnandan has been a member of the service for 11 years and has five other CCRB complaints filed against him containing nine allegations, none of which were substantiated. In case #200804411, there is one search of a person and two question allegations pleaded against him. The search allegation was closed as victim uncooperative, and the question allegations were closed as victim uncooperative and unsubstantiated, respectively. In case #200804696, there is a frisk and stop allegations pleaded against him, both of which were closed as unsubstantiated.
- PO Marquez and PO Farley have been members of the service for one year and this is a first CCRB complaint filed against each of them.

Potential Issues

Since § 87(2)(b) did not provide a phone number for § 87(2)(b) multiple attempts to obtain a phone statement from him prior to his interview were unsuccessful because § 87(2)(b) insisted that § 87(2)(b) spoke to the investigator using only her phone, which records all conversations. Eventually, § 87(2)(b) was scheduled for an in-person interview through his mother § 87(2)(b) and never provided a phone statement to the CCRB prior to his in-person appearance at the agency. § 87(2)(b) accompanied § 87(2)(b) to the interview and prior to its beginning, related to the investigator that § 87(2)(b)

Findings and Recommendations

Allegation A –Abuse of Authority: Sergeant Jerry Sukhnandan stopped § 87(2)(b)

Allegation B –Abuse of Authority: Sergeant Jerry Sukhnandan frisked § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped; § 87(2)(g)

During his in-person statement at the CCRB, § 87(2)(b) stated that he was walking alone on Woodruff Avenue towards a vegetable stand located at the corner of Woodruff Avenue and Flatbush Avenue in Brooklyn, when he was stopped by Sgt. Sukhnandan near 181 Woodruff Avenue [BR 06]. During the walk, § 87(2)(b) was always looking straight ahead and had his hands out along his body. § 87(2)(b) did not commit any infractions on his way nor did he stop to talk to anyone or made any physical contact with anyone. After the officers pulled over next to him, Sgt. Sukhnandan asked § 87(2)(b) where he was going to, and he replied he was going to a vegetable stand for his mother. Sgt. Sukhnandan then exited the vehicle and patted down his stomach area and his sides over his jacket. Sgt. Sukhnandan instructed § 87(2)(b) to put his hands sideways, and he complied and never put his hands inside his pockets. § 87(2)(b) stated that on that day, he was wearing navy blue school sweatshirt pants with no pockets, black hooded sweater with the hood up, and a black bomber jacket with two front outer pockets, one zipper pocket on a left sleeve, and two inner pockets on the left side.

When interviewed at the CCRB, Sgt. Sukhnandan confirmed that he was the recorder in the vehicle and that he, PO Marquez and PO Farley were just patrolling the area [BR 09]. When PO Marquez was driving westbound on Woodruff Avenue, after turning from Flatbush Avenue, Sgt. Sukhnandan observed § 87(2)(b) somewhere in the vicinity of 181 Woodruff Avenue, who he found suspicious. Although it was hot outside, § 87(2)(b) was wearing a hooded sweatshirt with the hood up and a jacket over. § 87(2)(b) was walking faster than other people, was looking back and forth, and had his hand inside his front right sweater pocket as if he was holding something inside while the left hand was resting along his body. In addition, Sgt. Sukhnandan observed an approximately four- to five-inch long and three-inch wide round bulge inside the right pocket where § 87(2)(b) hand was. Sgt. Sukhnandan was approximately seven feet away from § 87(2)(b) when he observed the bulge. Sgt. Sukhnandan informed the undersigned investigator that the intersection of Woodruff Avenue and Flatbush Avenue and a few adjacent blocks are known as a high-crime area where robberies, shootings, and burglaries happen approximately two to six times a week. Based on the above mentioned factors, Sgt. Sukhnandan concluded that § 87(2)(b) was concealing a firearm inside his pocket and was possibly looking for victims. When asked what particularly about the shape of the bulge led him to believe that § 87(2)(b) had a firearm in the pocket as opposed to a cell phone or a wallet, Sgt. Sukhnandan stated

its length and the manner § 87(2)(b) had his hand inside the pocket as if holding the object. Sgt. Sukhnandan also added that his tenure as a police officer elevated his suspicion that § 87(2)(b) might have been concealing a weapon and looking for victims. Sgt. Sukhnandan acknowledged, however, that § 87(2)(b) did not fit a description of any suspects of the crime he had been investigating and was not a subject of any I-Cards or warrants. § 87(2)(b) did not stop to talk to anyone nor did he touch anyone on the street or made any physical gestures. Sgt. Sukhnandan also added that he had not seen § 87(2)(b) prior to that day.

Sgt. Sukhnandan instructed PO Marquez to pull over so that they could stop § 87(2)(b). As PO Marquez did that, Sgt. Sukhnandan exited the car and initiated the stop by asking § 87(2)(b) his name and where he was going. PO Marquez exited the car together with Sgt. Sukhnandan, and PO Farley remained inside for a while due to the locked back doors. § 87(2)(b) stopped, provided his name and stated he was going to a store. § 87(2)(b) hand was still in his pocket and Sgt. Sukhnandan observed the same bulge. Sgt. Sukhnandan patted § 87(2)(b) right sweater pocket, and § 87(2)(b) took his hand out as the sergeant did that. Sgt. Sukhnandan did not recall if he instructed § 87(2)(b) to do that or if § 87(2)(b) did that on his own volition. Sgt. Sukhnandan felt § 87(2)(b) hand inside and did not feel anything else. After § 87(2)(b) took the hand out, the bulge was no longer there. The frisk yielded negative results.

The information noted in the stop, question, and frisk report is consistent with Sgt. Sukhnandan's testimony at the CCRB, although it is just noted that the bulge was in the front sweater pocket without specification on which side [NYPD 03].

In his statement to the CCRB, PO Marquez corroborated Sgt. Sukhnandan's account partially and confirmed that § 87(2)(b) was looking back and forth and had his hand inside his center hooded sweatshirt pocket when his attention was drawn to him by Sgt. Sukhnandan [BR 08]. When PO Marquez was approximately 15 feet away from § 87(2)(b) he also observed an approximately six inches wide and three to four inches tall round bulge in that center pocket, which he also believed might have been a weapon, possibly a gun. PO Marquez based his conclusion on the fact that the pocket was big, § 87(2)(b) had his hand in it and was looking back and forth. PO Marquez indicated that § 87(2)(b) was walking at a regular rate of speed and his other hand was just resting along his body. PO Marquez largely corroborated Sgt. Sukhnandan's testimony of how the stop was initiated and noted when he approached § 87(2)(b) his hand was no longer in his sweater pocket nor was the bulge there. However, PO Marquez still considered § 87(2)(b) armed and dangerous due to the initial bulge. PO Marquez was not aware if § 87(2)(b) took his hand out of the pocket voluntary or was instructed to do so by the sergeant. PO Marquez testified that Sgt. Sukhnandan patted § 87(2)(b) in his waist area and front center sweater pocket, however, the sergeant did not relate to the officer whether he had felt anything suspicious on § 87(2)(b). PO Farley approached her partners and § 87(2)(b) at some point during the stop, but PO Marquez believed that § 87(2)(b) had already been frisked by the sergeant.

When interviewed at the CCRB, PO Farley stated that since she was sitting on the back seat of the car, she was not aware of the reason for § 87(2)(b) stop until the end of the incident [BR 07]. After responding to an assignment in the vicinity of Parkside Avenue and when PO Marquez was making a right turn on Woodruff Avenue from Flatbush Avenue, Sgt. Sukhnandan instructed PO Marquez to pull over and PO Farley observed § 87(2)(b) stand on the corner of the two avenues. PO Farley testified that § 87(2)(b) was by himself, was not making any suspicious gestures or looking around. § 87(2)(b) had both hands inside his sweater pocket, however, he did not seem to be armed and dangerous to her at that time. PO Farley testified she

did not observe the bulge that was one of the reasons for the stop as after PO Marquez pulled over, she was attempting to exit the car and her view of § 87(2)(b) was obstructed by the divider between the doors in the car. PO Farley did not observe the frisk for the same reason. By the time she rolled down the window of the car and exited, Sgt. Sukhnandan and PO Marquez were on their way back. After her partners returned to the car, Sgt. Sukhnandan informed her that when the officers were on their way to the assignment that preceded § 87(2)(b) stop and as PO Marquez was making a left turn onto Woodruff Avenue from East 21st Street, he observed § 87(2)(b) walking on the sidewalk of Woodruff Avenue for the first time. At some point, Sgt. Sukhnandan related to PO Farley he decided to stop § 87(2)(b) because he was suspected of criminal possession of a weapon and had a bulge. Sgt. Sukhnandan also informed PO Farley that he had frisked § 87(2)(b).

In her unverified phone statement to the CCRB, § 87(2)(b) stated that during her interaction with the subject officers that happened after the stop, she asked one of the officers if § 87(2)(b) had an active warrant or fit a description of a suspect, and one of them replied no [BR 02]. When § 87(2)(b) inquired why § 87(2)(b) was stopped, one of the officers responded, “Just to make sure.”

According to AccuWeather website, it was 56° Fahrenheit in New York City on April 22, 2017 [BR 21].

According to New York State Criminal Procedure Law § 140.50, an officer may stop an individual if he/she has reasonable suspicion that an individual has committed, is committing or is about to commit a crime [BR 14]. In People v. DeBour, 40 N.Y. 2d 210, it was established that innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand [BR 15]. In People v. Marine, 142 A.D. 2d 368, officers did not have reasonable suspicion that criminality was afoot upon observing a male walking in a “drug-prone” location in a suspicious manner and adjusting an object in his waistband area without observing a bulge of a specific shape [BR 16]. In addition, an unidentifiable bulge by itself, does not necessarily suggest that a weapon is concealed and criminality is afoot. People v. Severino, 126 A.D. 3d 1015 [BR 17]. In People v. Prochilo, 41 N.Y. 2d 759, officers were justified in stopping an individual since they observed a bulge on his hip with a clear outline of a revolver [BR 18]. Upon stopping an individual, officers may also conduct a limited pat-down of an individual if they fear for their safety and observe a waistband bulge, which is a tell-tale sign of a weapon. People v. DeBour, 40 N.Y. 2d 210 [BR 15]. If the shape of the bulge does not suggest a shape of a weapon, the totality of the circumstances should be assessed to justify a frisk of an individual. People v. Robinson, 279 A.D. 2d 323, People v. Barreto, 555 N.Y. S. 2nd 303 [BR 19, 20].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C –Abuse of Authority: Sergeant Jerry Sukhnandan searched § 87(2)(b)

Allegation D –Abuse of Authority: Sergeant Jerry Sukhnandan questioned § 87(2)(b)

Allegation E –Abuse of Authority: Police Officer Johnny Marquez searched § 87(2)(b)

Allegation F –Abuse of Authority: Police Officer Christina Farley searched § 87(2)(b)

§ 87(2)(b) stated that after Sgt. Sukhnandan patted him down, the sergeant entered his front center pocket and front jacket pockets [BR 06]. § 87(2)(b) had his money in the left front jacket pocket and keys in the right front jacket pocket, which Sgt. Sukhnandan removed and then gave back to him. Sgt. Sukhnandan also asked § 87(2)(b) if he had any narcotics on him, and § 87(2)(b) replied he did not. After that, PO Marquez entered § 87(2)(b) inner jacket pockets and PO Farley entered his jacket zipper pocket on his left sleeve. Neither of the officers asked for permission to do so or asked him any questions. Sgt. Sukhnandan then asked § 87(2)(b) to take his hood off and let him go.

Sgt. Sukhnandan denied entering any pockets on § 87(2)(b) or asking him if he had any narcotics on his person [BR 09, 08]. Sgt. Sukhnandan testified that neither PO Marquez nor PO Farley entered any pockets on § 87(2)(b) and he was never instructed to remove any items from his pockets.

PO Marquez corroborated Sgt. Sukhnandan's account that he never searched § 87(2)(b) and did not believe that the sergeant asked § 87(2)(b) about narcotics [BR 08]. PO Marquez

denied searching § 87(2)(b) or having any physical contact with him, and stated that PO Farley did not search § 87(2)(b) either.

PO Farley maintained that she was not present during the stop and did not observe either Sgt. Sukhnandan or PO Marquez search § 87(2)(b) due to the obstructed view [BR 07]. PO Marquez also did not hear what her partners were talking to § 87(2)(b) about. PO Farley denied searching § 87(2)(b) or having any physical contact with him.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date